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Written statement* submitted by the Europe-Third World Centre (CETIM), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Human Rights Violations and Access to Justice for the Victims of Chevron in Equador[1]

History and Effects of the Activities of Chevron (formerly Texaco) in Ecuador

On 5 February 1964, the military junta governing Ecuador granted a concession covering some one and a half million hectares of territory to Texaco Gulf in the Amazon region of Ecuador. Although the concession was later reduced, the area on which Texaco operated surpassed 400,000 hectares (in the provinces of Orellana and Sucumbios).[2]

Texaco carried out exploration and oil drilling in jungle regions inhabited by various Ecuadorean indigenous communities.[3]After the exploration phase, during which explosives were used and an incalculable number of boreholes were drilled into the earth's crust, Texaco drilled more than 350 wells. During the drilling of each of these wells, a huge quantity of toxic waste was produced, known as "drilling mud".[4]

Owing to its high toxicity, this waste had to be stocked in adequate containers and treated responsibly. Texaco, far from doing this, dug almost a thousand pits that were used as open air sewers, without any sort of protection to prevent leaks through the walls of the pits and the release of pollution. When these products were not dumped into the environment, they were simply burned intentionally by Texaco, with equally harmful consequences for the populations and the environment.

Then, during the operating of the wells, these same pits were used by Texaco to stock waste water and other dangerous residues, whereas steel cisterns would ordinarily have been required. The company thus realized considerable savings – to the detriment of both the environment and the local populations.

The irresponsibility of the company did not stop there. In spite of legal[5] and contractual[6] prohibitions, the content of these "pools" was simply dumped into the nearby rivers streams. Texaco had installed in each "pool" a rudimentary drainage system called a "goose neck" systematically used to drain the contents of the pits into the nearest streams. Although Texaco was well aware of the noxious effects of its activities[7] and had available technology that would have avoided – or at least considerably reduced – the damage done by dumping these toxic substances into the environment,[8] this technology was never used during its operations in Ecuador.[9]

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[1] This declaration has been drafted in collaboration with *Unión de Afectados por las Operaciones de la Petrolera Texaco (Chevron) en Ecuador* (UDAPT).

[2] In the concession contract and successive agreements modifying it, it was stipulated that Texaco would be entrusted with carrying out all technical planning and work in the field. This situation remained in effect for the duration of the concession, until June 1990, leaving Texaco the only and exclusive company operating in the entire concession area.

[3] At the time, the area was inhabited by the following nationalities: Secoya, Waorani, Shuar, Quichua, Cofán and Tetete.

[4] Drilling mud is a mixture of various chemical products used to lubricate the bit of the machines drilling the the boreholes and wells. This mixture contains several heavy metals and other toxic and carcinogenic products, such as chrome VI.

[5] For example, Article 12 of the health code, in effect since 1971, stipulates: "Nobody shall release into the air, the soil or the water solid, liquid or gaseous residues without having first treated them in order to render them unharmful to health." See also Article 22 of the law on water, in effect since 1972, which stipulates: "All contamination of water that affects human health or development of the flora and fauna is prohibited."

[6] In a contractual clause, it was required that the company operate "the concession by using adequate and efficient materiel".

[7] In 1962, T. Brink, an engineer working for Texaco, Inc., wrote an article about the risks of the waste water in a book entitled *Principles of the Oil and Gas Industry*, published by the American Petroleum Institute. In this book, the dangers of dumping waste water into water used for human consumption are discussed; in other words, exactly what Texaco did in Ecuador.

[8] Already in 1974, Texaco had filed for several patents for re-injection equipment which, if it had been used in Ecuador, would have avoided the dumping of 60 billion liters of waste water into the streams of the Ecuadorean Amazon region.

[9] The first re-injection equipment arrived in Ecuador at the beginning of 1998, well after Texaco had left the country. Before that, the system set up and used by Texaco dumped all waste water directly into the streams.

Whereas this region was previously characterized by its vast biodiversity and its abundant resources for the inhabitants, these resources have disappeared or are seriously harmed by the hydrocarbons because of the water and soil contamination, threatening the populations' right to food[10] and to health.[11]

Several peoples that had been living in the region since time immemorial have disappeared or been displaced. The Cofán population was reduced form 5,000 inhabitants to less than 800. They have been displaced from their lands, while the Tetete population was completely exterminated.

Laboratory analyses carried out by Chevron's experts in the region where the company operated show a high presence of total petroleum hydrocarbons (TPHs) in the ground, which indicates a generalized presence of hydrocarbons. They also show the presence of other carcinogenic elements such as benzine, toluene, polycyclic aromatic hydrocarbons (PAHs) and heavy metals and/or anti-corrosion agents, such as chrome IV and mercury.[12] It has been determined with certainty that the presence of these elements in the areas where Texaco operated is the result of the oil operations carried on by this company.

Regarding the contamination of the surface water, there is a confession by Texaco's legal counsel acknowledging in an open letter having dumped more than 60 million liters of waste water into the Amazon streams.[13] Underground water was also polluted, which is confirmed by smelling or tasting the water from wells (in so far as one dare). There is also a strong presence of TPHs and other elements such as chrome VI (characteristic of hydrocarbons) coming from leaks and infiltrations resulting from the lack of insulation of the waste pits in which Texaco dumped or buried the drilling mud and other toxic pollutants. All these poisons are today to be found in the environment, causing skin illnesses, vaginal and intestinal infections and other respiratory, reproductive and circulatory system problems as well as many types of cancer (throat, stomach, kidney, skin, brain), which have caused the death of many persons.[14]

Thus, in 26 years of oil drilling in the Amazon region of Ecuador, Texaco has polluted more than 450,000 hectares of one of the planet's richest biodiversity regions, destroying the living and subsistence of its inhabitants, causing the death of hundreds of persons and a brutal increase in the rate of cancer and other serious health problems. More than 60 billion liters of toxic waste water were dumped into the rivers and streams, 880 hydrocarbon waste pits were dug, and 6.65 billion cubic meters of natural gas were burned in the open air.

Attempts at (and Obstacles to) Obtaining Justice against Chevron

The litigation against Texaco was initially undertaken in New York, where, at the time, Texaco, Inc., had its world headquarters, on 3 November 1993, barely one year after Texaco had left the country. Nearly 30,000 Ecuadoreans, indigenous and *colonos*, directly or indirectly affected by the activities of Texaco on their lands, thus filed a legal suit in the United States. In 2002, after nine years of procedure, without having even considered the pollution, the United States courts finally accepted the argument put forward by Chevron (which had then merged with Texaco)[15] and

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[10] Chevron's activities had a horrible impact on the right to food and the way of life of the persons affected. Those who derived their food from what the jungle supplied, through gathering, hunting and fishing, were suddenly deprived of their source of food, the animals having fled or disappeared because of the noise and pollution.

[11] The human right to health can be affected by environmental damage. In this case, one can note an increase in the cases of cancers due exposure to petroleum and other polluting elements used to produce it. There are many studies that demonstrate a cause-effect relation between exposure to petroleum and an increase in the cases of cancer. They concur with the testimony of numerous persons who have recounted their sufferings and illnesses following exposure to such pollution.

[12] These are elements recognized as carcinogenic by various governmental and international health agencies, such as the United States Agency for Toxic Substances and Disease Registry (ATSDR), the World Health Organization's International Agency for Research on Cancer etc. These elements are the same as those used in the drilling mud mixtures.

[13] Open letter from Dr Rodrigo Pérez Pallares, Texaco Petroleum Company legal counsel, to the director of the magazine *Vistazo*, 5 March 2007, republished in the *El Comercio* newspaper 16 March 2007, first section, page 7.

[14] The health effects on the inhabitants of the Amazonian forest exposed to hydrocarbon pollution has been documented in the YanaCuri Report, which compared the health of populations living near wells and production installations with the health of persons who were not exposed to the same conditions. In the same way, the study "Cancer in the Amazon Region of Ecuador" also presents a comparison between exposed and non-exposed populations. These studies demonstrate much higher rates of cancer than in other regions of Ecuador where there were no hydrocarbon operations.

[15] In 1999 was launched the merging process between Chevron Corporation and Texaco INC. On the 9 of October 2001, the merger between the two TNCs was completed. From that time the new corporation took the name of

decided not to hear the case of the Ecuadorean inhabitants under *forum non convinens*, arguing that Ecuador was the more appropriate place for the case to be heard.[16]
Pursuing their quest for justice, and in keeping with the decision of the United States court, the populations affected by Chevron's operations filed a complaint in Ecuador on 7 May 2003.[17]

However, in spite of the ruling of the United States court, Chevron contested the jurisdiction of the Ecuadorean judges over the case, arguing that Chevron had never operated in Ecuador and that Chevron was not the company that had succeeded Texaco because there had never been a merger.

During the first years of the trial in Ecuador, the plaintiffs were persecuted by the Ecuadorean armed forces, which were in fact in the pay of Chevron as security services.[18] This "access" by Chevron to the military also made possible the falsification of reports from the intelligence services and the suspension of arrest warrants.

Chevron also drafted a plan to assure that the experts find only clean samplings.[19] An "independent" company was also set up by Chevron to analyze samplings and to project an image of impartiality.[20]

On 14 February 2011, the Court of Sucumbíos finally handed down its ruling and ordered Chevron to pay nearly US$ 9 billion in compensation to finance the clean-up of the contaminated ground and water, a health program to aid the cancer victims and a program to restore the lost fauna and flora as well as the lost agricultural land. Chevron was also ordered to pay punitive damages, given the magnitude of the damage caused and the bad faith demonstrated by its lawyers throughout the trial.

This judgment was confirmed on appeal on 3 January 2012, and it was then subjected to an examination by the National Court of Ecuador, the country's highest judicial instance. On 12 November 2013, this court confirmed the ruling. It also confirmed all the rulings of the lower courts regarding environmental damage and let stand the order for punitive damages.[21]

Thus, after 20 years of complex legal proceedings, the plaintiffs succeeded in surmounting the many obstacles and winning their case in court, but they have not yet managed to obtain compensation for the harm caused.

In spite of its defeat in courts that it chose itself, Chevron still refuses to acknowledge the ruling against it. And Chevron is using its substantial financial resources not to fulfill its obligation of compensation for the harm done but to

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Chevron-Texaco Corporation; but then in 2005, "Texaco" was eliminated from the name and only Chevron Corporation remained.

[16] The United States judges "guaranteed" the plaintiffs the right to a trial by imposing on Chevron the obligation to accept Ecuadorean justice and to abide by whatever adverse ruling might be handed down. To free itself of the United States jurisdiction, Chevron had even agreed and committed itself to accepting the ruling in Ecuador, but the victims soon realized that this constituted no guarantee.

[17] The complaint stipulated that Chevron had caused damage to the environment by using obsolete and polluting technology and practices, in violation of Ecuadorean law, which specifically required the operator to avoid the damage to the ecosystem and to use "modern and efficient technology".

[18] The contracts are not available to the public, but it is well known that the president of the Republic of Ecuador, Rafael Correa, has denounced the consequences of one contract signed some ten years ago by an army-owned company to provide security and intelligence services of the transnational oil company Chevron. See www.andes.info.ec/es/actualidad/presidente-correa-denuncia-contrato-empresa-militar-ecuatoriana-brinda-servicios

[19] These documents were not available to the victims during the trial against Chevron. They were obtained by the Republic of Ecuador through discovery. They are now available at http://www.iguanamixer.com/2014/05/chevrons-expert-inspection/

[20] But, as even these results demonstrated the presence of pollution, Chevron arranged for its experts to compare them with limits 100 times higher than those accepted in the United States in order to reach the conclusion that there were no health risks. The Ecuadorean judges rejected these "conclusions" and ordered an independent evaluation of the samplings.

[21] Ruling handed down by the National Court of Justice 13 November 2013, case 174-2012.

finance an international campaign of defamation attacks against the plaintiffs, their lawyers and any other persons working to support their cause.[22]

Chevron has also hired and paid US$ 15 million to a company called Kroll to conduct surveillance of the activities of the supporters and sympathizers of the victims.[23] And Chevron has paid more than US$ 300,000 to an Ecuadorean judge disbarred for corruption[24] in exchange for his testimony to convict the plaintiffs in the United States.[25] Thus, the sames United States courts that declared that they had no jurisdiction in the complaint filed by the Ecuadorean victims of Chevron are now prosecuting those victims as if they were criminals trying to extort money from an innocent company.

To that, one must add the attempts to buy previous Ecuadorean governments and the major political and media campaign launched against the government of President Correa, by means of arbitration complaints[26] and an international campaign[27] as well as attempts to discredit the Ecuadorean judicial system. The victims are thus faced with a giant ready and able to deploy all the means at its disposal, a giant that, after having poisoned the lands of the Amazon region of Ecuador, seeks to subject and humiliate the victims that dare file a complaint.

On their side, the victims, traveling the long legal road that Chevron forces them to take, have undertaken legal action to obtain the implementation of the ruling in various countries. They must face innumerable difficulties, starting with lawyers' fees, the problem of jurisdiction deriving from acknowledgment of the ruling form a foreign court and even political pressure.[28]

After 21 years of litigation, the impunity continues for Chevron, and the victims of its activities in Ecuador are still waiting for justice and compensation.

The Necessity of a Binding International Instrument

The Chevron case is emblematic in many ways and shows, in particular, the destructive effects for the environment and the local populations of natural resource extraction activities carried out by transnational corporations (TNCs) without any control or oversight, and the tortuous road that the victims must travel to obtain justice and compensation. The victims must face extremely powerful actors, with powerful influence networks and almost unlimited means, and they cannot always count on the cooperation of the governments of the countries within which the TNCs have their

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[22] The plaintiffs' lawyers are faced with law suits for extortion in the United States and for fraud in Argentina, criminal indictments in Colombia and campaigns in the media. The purpose of these attacks is to deprive the victims of their right to defense. Further, Chevron has systematically attacked all sources of income of the victims to deprive them of every possibility of continuing the fight.

[23] Testimony given under oath, 10 June 2013, by Daniel Karson, representing Kroll, Inc., in the context of the Chevron Corp. case against Steven Donzinger et al., 1:11-cv-00691-LAK-JCF.

[24] Testimony given under oath, 17 November 2012, before a notary public in Chicago, Illinois, United States of America, by Alberto Guerra Bastidas, former Ecuadorean judge relieved of his functions because of corruption.

[25] The suit against the victims continues under the *Racketeer Influenced and Corrupt Organization Act*. In March 2014, the New York judge Lewis Kaplan ruled in favor Chevron and forbid the Ecuadorean victims of Chevron to serve their sentences in the United States. For a brief description of Chevron's bad faith during the trial, see document N° 1850, pp. 11-20 of the RICO case. See also: http://www.earthrights.org/es/blog/una-verdad-innecesaria-reflexiones-sobre-lo-que-nunca-se-conto-en-el-caso-rico

[26] Chevron filed a complaint against the Ecuadorean government with an arbitration tribunal, arguing that the case against it for environmental damage by Ecuadorean citizens constituted a violation of the bilateral investment treaty between Ecuador and the United States. Although the Amazon region plaintiffs did not participate in this arbitration (they were neither informed nor heard during every phase of the case), the tribunal twice ordered Ecuador to take all measures necessary for the execution of the ruling against Chevron.

[27] Chevron spent millions of dollars in a lobbying campaign to discredit the image of Ecuador, its civil servants and its courts, to have its trade agreements rescinded and to obtain international sanctions, in order to put pressure on the Ecuadorean government to force it to suspend the court case brought by its citizens.

[28] In Argentina in particular, it has become clear that the conditions that Chevron imposed for investing in *Vaca Muerta* have triggered a change in the position of the executive branch in favor of unfreezing Chevron's assets in the country. Thus, the Supreme Court of Argentina followed the requests of the state's attorney and decided that Chevron-Argentine did not have to assume the obligations of its mother company Chevron Corp., for it had not been subject to legal action in Ecuador. This set a disastrous precedent for any complaint case against corporations that hide their assets behind a system of subsidiaries, for, according to the Court's ruling, it would be necessary to file complaints against all the subsidiaries to target the assets of the mother company. It goes without saying that this would be impossible.

headquarters, governments which very often favor TNC economic interests rather than the rights of victims outside the country.

The current economic system accords many rights and protections to TNCs without their being held responsible for their actions and for the human rights violations committed. An international system that recognizes the rights but not the obligations of the most powerful economic actors can hardly be called stable and balanced. It is clearly biased in favor of the TNCs and leaves the victims of their activities without any avenue of redress. It is high time to establish a balance within this system.

The adoption of binding norms at the international level is necessary to complete and support the efforts at the national level and to guarantee a real control over the activities of TNCs and their impacts on human rights, as well as access to justice for the victims of their activities. These norms should, in particular, include responsibility throughout the entire supply chain, from the top corporation on down to the smallest supplier and sub-contractor. They should guarantee access to justice for victims of their activities abroad in the country where the TNCs have their headquarters. Finally, they should reinforce international judicial cooperation in order to facilitate the implementation of court rulings concerning human rights violations committed by TNCs.

In view of what has just been stated, the Europe – Third World Center (CETIM) is calling upon the Human Rights Council to set up an intergovernmental working group with a mandate to draft binding norms for TNCs.

It is also calling upon all governments, and in particular the government of the United States of America, to facilitate access to justice for the victims of Chevron's activities in Ecuador and to cooperate fully so that the ruling by the Ecuadorean court will be executed.